

### C. APPLICANT'S COMMENTS

Claims 1 - 23 are pending in this Application, with Claims 1, 5, 6, 12, 13, 15, 18 and 19 being amended, Claims 20 - 23 being added and Claims 2, 11 and 14 being canceled. No new matter is added by way of these amendments, and the amendments are supported throughout the Specification and the drawings. Reconsideration of Claims 1 - 23 and favorable consideration of Claims 20 - 23 is respectfully requested. The Examiner's rejections will be considered in the order of their occurrence in the Official Action.

#### Section 1 of the Office Action (Claim Rejections - 35 USC § 112)

##### i. *Sub-Section 1*

The Official Action rejected Claim 6 under 35 U.S.C. §112 as failing to comply with the written description requirement. The Applicant has made the following amendment to Claim 6:

*"(b) training the new member through the marketing service where the training progress is tracked by the up-line team member(s) and where the new member is trained to utilize the marketing service and to bring a Web site user to a Web site hosted by either the new member or the up-line team member(s)"*

The Applicant respectfully disagrees with the Examiner in regards to the written description failing to point out, in great enough detail, how to train new members (i.e. down-line members). Paragraph 36 of the Applicant's published application points out *"The Training Manager is a training system setup where the new user can be trained on-line through multi-media presentations, audio recordings and text material on how to benefit and use the user's (his up-line team member) goods and services and how to use the MNS itself."*

The Examiner poses a question on why the new member has to be trained. This is described in Paragraph 37 (as follows in italics) of the Applicant's published application, wherein one reason the new member has to be trained is to be able to drive traffic to his/her web site and thus the marketing network service. *"After sufficient training, the new member begins*

*213 to drive guest traffic to his Web site in the same way as his up-line team member where these Web sites are maintained on the MNS computing platform.”*

*i. Sub-Section 2*

The Official Action rejected Claims 1, 5, 6, 15 and 19 under 35 U.S.C. §112 as including insufficient antecedent basis. The Applicant has made the necessary corrections in accordance with the Examiner’s helpful suggestions.

*i. Sub-Section 3*

The Official Action rejected Claims 6 and 8 under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. The Applicant has made the necessary corrections in accordance with the Examiner’s helpful suggestions.

**Section 2 of the Office Action (Claim Rejections - 35 USC § 103)**

The Official Action rejected Claims 1-19 under 35 U.S.C. §103(a) as being unpatentable over Angles (5,933,811) in view of Kolke (2002/0147625). The Applicant respectfully disagrees with this rejection of Claims 1-19 for at least the following reasons.

The Applicant respectfully submits that all of the prior art references are non-analogous to the present invention – particularly in view of the amendments made to Claims 1, 6 and 23 clearly defining the invention as a **“A Method For A Marketing Network Service To Generate And Manage Sales And Marketing Information For Service Members.”** None of the prior art references cited by the Official Action are within the “Marketing / Identifying Consumer” area similar to the Applicant’s, wherein the prior art references do not utilize a “hierarchal” representative structure along with a marketing service designed to “capture” consumer information.

“The determination that a reference is from a non-analogous art is . . . twofold. First, we decide if the reference is **within the field of the inventor’s endeavor**. If it is not, we proceed to determine whether the reference is **reasonably pertinent to the particular problem with which**

the inventor was involved.” *In re Wood*, 202 USPQ 171, 174 (C.C.P.A. 1979). “A reference is reasonably pertinent if . . . it is one which, because of the matter with which it deals, logically would have commended itself to the inventor’s attention in considering his problem. . . . If a reference disclosure has the same purpose as the claimed invention, the reference relates to the same problem, . . . [i]f it is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it.” *In re Clay*, 23 USPQ 2d 1058, 1060–61 (Fed. Cir. 1992).

The Applicant also respectfully submits the following case law in support that the prior art stated in the Official Action is non-analogous:

- “In resolving the question of obviousness under 35 USC 103, we presume full knowledge by the inventor of all the prior art in the field of his endeavor. However, with regard to prior art outside the field of his endeavor, we only presume knowledge from those arts reasonably pertinent to the particular problem with which the inventor was involved. . . . The rationale behind this rule precluding rejections based on combination of teachings of references from nonanalogous arts is the realization that an inventor could not possibly be aware of every teaching in every art.” *In re Wood*, 202 USPQ 171, 174 (C.C.P.A. 1979).
- “In the instant application, the examiner has done little more than cite references to show that one or more elements or subcombinations thereof, when each is viewed in a vacuum, is known. The claimed invention, however, is clearly directed to a combination of elements. That is to say, appellant does not claim that he has invented one or more new elements but has presented claims to a new combination of elements. To support the conclusion that the claimed combination is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed combination or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. . . . Based upon the record before us, we are convinced that the artisan would not have found it obvious to selectively pick and choose elements or concepts from the various references so as to arrive at the claimed invention without using the claims as a guide. It is to be noted that simplicity and hindsight are not proper criteria for resolving the issue of obviousness.” *Ex parte Clapp*, 227 USPQ 972, 973 (B.P.A.I. 1985).
- “We have reminded ourselves and the PTO that it is necessary to consider “the reality of the circumstances” . . . — in other words, common sense—in deciding in which fields a person of ordinary skill would reasonably be expected to look for a solution to the problem facing the inventor.” *In re Oetiker*, 24 USPQ 2d 1443, 1446 (Fed. Cir. 1992).
- “The Allen-Bradley art is not in the same field of endeavor as the claimed subject matter merely because it relates to memories. It involves memory circuits in which modules of

varying sizes may be added or replaced; in contrast, the subject patents teach compact modular memories. . . . Wang's SIMMs were designed to provide compact computer memory with minimum size, low cost, easy repairability, and easy expandability. . . . In contrast, the Allen-Bradley patent relates to a memory circuit for a larger, more costly industrial controller. . . . Thus, there is substantial evidence in the record to support a finding that the Allen-Bradley prior art is not reasonably pertinent and is not analogous." *Wang Labs., Inc. v. Toshiba Corp.*, 26 USPQ 2d 1767, 1773 (Fed. Cir. 1993).

Following is the currently amended Claim 1:

1. A method for a marketing service to generate and manage sales and marketing information for service members comprising:
  - (a) obtaining personal information of a guest;
  - (b) tracking viewing activity of the guest considering an offer for goods and/or services;
  - (c) creating a neuro dynamic profile particular to each guest, where the neuro dynamic profile is characterized by personality type, communication style, motivation strategy and decision strategy;
  - (d) combining the personal information, viewing activity and neuro dynamic profile to form a contact report;
  - (e) storing the contact report under a contact management program file;
  - (f) moving contact information of the contact report between service members; and
  - (g) using the contact information by the service members.

The Applicant respectfully submits that the following points from Claim 1 are not properly disclosed by the prior art references disclosed by the Examiner:

- **creating a neuro dynamic profile particular to each guest, where the neuro dynamic profile is characterized by personality type, communication style, motivation strategy and decision strategy;**
- **moving contact information of the contact report between service members; and**
- **using the contact information by the service members.**

#### *A. Creating Neuro Dynamic Profile*

The Applicant has amended Claim 1 to include the characterization of the neuro dynamic profile. The neuro dynamic profile is characterized by personality type, communication style, motivation strategy and decision strategy. The Examiner had previously rejected Claim 2 based on the prior art provided by Angles. Angles discloses in Col. 16 lines 1 – 7 “... which advertisements are viewed by consumers, how often the advertisements are viewed, which consumers have viewed an advertisement, the number and type of advertisements a particular

*consumer has viewed, which content providers are requesting customized advertisements, the number and type of advertisements which are being displayed by a particular content provider computer 14, etc."*

The neuro dynamic profile as claimed and discussed by the Applicant provides a more detailed and different analysis of the consumer and is subsequently described in Par. 33 of the Applicant's published application as follows, *"The neuro dynamic profile (NDP) is an analysis of the personality type, communication style, motivation strategy, decision strategy and other psychological profiled information developed from the data captured during Web site user experience. Basic personality types that can be determined include aggressiveness, patience, intelligence and practicality. A communication style is based on whether the guest shows a predilection to information presented in a visual, auditory, kinetic or analog/digital fashion. A motivation strategy can be deduced from the guest's tendency to move away from pain or to move toward pleasure. A decision strategy is evidenced through the guest's tendency to collect and base a decision based on information from others or internalize the information for self-determination."*

The Applicant discusses the personality type being determined by such factors as aggressiveness, the communication style being determined by such factors as visual and auditory learning predilections, the motivation strategy being deduced from predilections toward pain or pleasure and the decision strategy being determined by matters such as self-determination or internalizing information to make a decision. None of these factors for developing a neuro dynamic profile are discussed by Angles.

The reasoning behind the use of the neuro dynamic profile also differs between the Applicant and Angles. Angles discusses the reasons to record the consumer information (Col. 16 lines 1 – 7) in Col. 16 lines 8 – 15 *"Maintaining a record of the advertisement audit information in the accounting database 72 provides a number of advantages. For example, because the accounting database 72 maintains a record of which advertisements have been viewed by consumers, advertisers can be billed based on actual delivery of the advertisements to pertinent*

consumers. Furthermore, advertisers can be billed based on how often a targeted demographic group views the advertisements.”

The Examiner also references Col. 20 lines 10 – 30 regarding the neuro dynamic profile discussed by the Applicant. However, both references on Col. 16 and Col. 20 of Angles suggest that Angles is utilizing the information discussed in Col. 16 lines 1- 7 (above) for reasons solely related to billing the advertisement provider.

The Applicant utilizes the neuro dynamic profile for characterizing the website for the consumers “Next Visit” and also to send out follow-up emails. The Applicant does not utilize the neuro dynamic profile to bill advertising companies, nor does Angles utilize the consumer information previously discussed in a manner similar to the Applicants.

The Applicant goes on in the Applicant’s published application Par. 34 to discuss the reasons for the neuro dynamic profile, *“In the next step, the user receives notification 206 of the guest contact and reviews the report. The user can read the e-mail report and/ or access his CM and review a detailed report on the guest information. The user could also have the guest receive auto-responder e-mails that are sent out automatically when the guest concludes the Web site visit. Use and content of the auto-responder e-mail are determined by the user based on the report results of the guest visit. These auto-responder emails are neuro dynamically enhanced using the psychological profile established during the tracking procedure. The wording, content, layout, graphics of this follow up email are tailored to the particular profile of the contact. In this way, the follow up response can be tailored to the personality and individual interests of the guest. Guest contact could be provided through whatever means is appropriate and available to investigate the guest’s interest in the Web site content. “Next Visit” issues are also addressed. When a contact returns to the site and signs the guest book, the MNS automatically detects who it is, that they have been here before, analyzes the neuro dynamic profile and tailors the content and user experience to best match his/her neuro dynamic profile (his or her buying and decision making strategy) to better elicit a sale or action from them.*

### B. *Moving Contact Information*

The Examiner also rejected step (f) *"moving contact information of the contact report between service members;"* of the amended Claim 1 of the Applicants in view of Kolke, wherein Kolke discusses various referral partners exchanging clients in a new manner. In Kolke, the referral partners work as a sort of "business partner" to exchange referrals between one another. It is appreciated that in Kolke referral partners gain an advantage in that the client(s) of a first referral partner may utilize the services or goods of a second referral partner based on the good reference the first referral partner gives the client in regards to the second referral partner. While the method disclosed by Kolke may work in the field of business and while it is common for people to do business with someone they know and trust, the method discussed by Kolke and the referral partners discussed by Kolke is not similar as discussed by the Applicant.

### C. *Using Contact Information*

The Applicant discloses the service members (i.e. in Claim 1) as being up-line and down-line members within the applicant's application. The reference to the service members as up-line and down-line members is specific to the fact that there exists a hierarchal relationship to the up-line and down-line members as discussed within Par. 29 of the Applicant's published application, *"...This staffing chart may take the form of a star or a pyramid where it begins with the first member (a representative of goods and services) and branches to an expanding network of joined users in the ongoing activity of recruiting other interested users as well as the marketing and sales of their own goods and services..."* It is appreciated that the Examiner note that the hierarchal relationship of the up-line and the down-line members is also added to amend and new claims 6, 20, 21 and 22 in the Applicant's response to the First Office Action.

The referral partners disclosed by Kolke merely serve as partners in a business relationship, wherein each referral partner disclosed by Kolke maintains a specific career in which that career / specialty is related to the other referral partners in the referral community. The up-line and the down-line members discussed by the Applicant are (some of the time) simply visitors to the current members website and decide that they would either like to be a new member down-line (i.e. under) from the current member to assist the current member with

operations upon the current member's website or to be down-line from the current member yet maintain their own website (whatever the new member's website may sell / provide doesn't matter).

The method of becoming a new member as disclosed within the Applicant's application is further discussed in Par. 35 of the Applicant's published application, *"At this point in time, the guest will generally elect 207 to ignore user contact 208 or, in an e-commerce scenario, the user would respond to the contact and pursue his interest in or purchase 209 the user's goods and services. Also, in a participatory scenario, the guest could indicate a real interest in the product and request to become a representative 210 under the MNS. The user responds to the user request by directing the guest to access the user's Web site and begin the subscription process. In the happy event the guest is also interested in purchasing a product; the user can direct the recruit to become his own first customer. In the subscription process, the guest is now "down-line" linked to the user as being referred or recruited by the user to the system and thus "attached" to user in the MNS. With respect to the new relationship of the guest and user, the guest becomes the new member or down-line member and the user is termed the up-line team member."*

The Examiner discusses how the use of the referral partners in Kolke would have been obvious to utilize within Angles. However, the Applicant respectfully disagrees in that for the simple reason that both Angles and Kolke discuss business transactions that may or may not involve e-commerce situations, Angles merely focuses upon advertisement computers, consumers and content providers and does not even mention the possibility of an up-line or down-line member situation.

The Examiner also rejects various claims (i.e. Claim 4, 18, 19) in regards to the Contact Manager program and the Teamwork Communication System disclosed by the Applicant on the basis that these claims were discussed in Angles and Kolke. However, merely because Angles and Kolke maintain a record of clients and pass client information between one another does not entail or suggest the detailed description and manner of use of the Contact Manager program or



the Teamwork Communication System as disclosed by the Applicant. For these reasons, the amended, new and original Claims 1 - 23 are believed by the Applicant to overcome all other rejections of the Applicant's application in view of Angles and Kolke.

**D. CONCLUSION**

In light of the foregoing amendments and remarks, early reconsideration and allowance of this application are most courteously solicited. Should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, they are invited to telephone the undersigned.

In addition, it is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Respectfully submitted,

/Michael S. Neustel/  
Michael S. Neustel  
Reg. No. 41,221

August 21, 2007  
Date

NEUSTEL LAW OFFICES, LTD  
2534 South University Drive, Suite No. 4  
Fargo, North Dakota 58103  
Telephone: (701) 281-8822  
Facsimile: (701) 237-0544  
e-mail: [michael@neustel.com](mailto:michael@neustel.com)

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I hereby certify that this correspondence is being filed electronically with the USPTO via ECF on August 21, 2007.

/Jericka M. Miller/  
Jericka M. Miller

NEUSTEL LAW OFFICES, LTD  
2534 South University Drive, Suite No. 4  
Fargo, North Dakota 58103  
Telephone: (701) 281-8822  
Facsimile: (701) 237-0544